

Exhibit 5

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: **PART: 53**

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ORCHARD HOTEL, LLC,

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Plaintiff,

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-against-

INDEX NO.
850044/11

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D.A.B. GROUP, LC; ORCHARD CONSTRUCTION,
LLC; FLINTLOCK CONSTRUCTION SERVICES,
LLC; JJ K MECHANICAL INC.; EDWARD MILLS &
ASSOCIATES, ARCHITECTS, P.C.; CASINO
DEVELOPMENT GROUP, INC.; CITYWIDE
CONSTRUCTION WORKS, INC.; EMPIRE
TRANSIT MIX, INC.; MARJAM SUPPLY CO., INC.;
ROTAVELE ELEVATOR, INC.; SMK ASSOCIATES, INC.,
FJF ELECTRICAL CO, INC.; CITY OF NEW YORK;
NEW YORK STATE DEPARTMENT OF TAXATION &
FINANCE; LEONARD B. JOHNSON; CITY OF
NEW YORK ENVIRONMENTAL CONTROL BOARD;
BROOKLYN FEDERAL SAVINGS BANK; STATE
BANK OF TEXAS and JOHN DOE #1 through JOHN
DOE #100, the last 100 names being fictitious,
their true identities unknown to plaintiffs,
and intended to be the tenants, occupants,
persons or corporations, if any, having
or claiming an interest in or lien upon the
premises described in the complaint,

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Defendants.

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60 Centre Street
New York, New York 10007
July 9, 2013

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B E F O R E:

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THE HONORABLE CHARLES E. RAMOS,

J U S T I C E

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(APPEARANCES ON FOLLOWING PAGE)

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believe the decision, in sum or substance, says there is no writing evidencing this purported extension --

THE COURT: When did you send that document to them?

MR. WALLACE: Well, the document actually --

MS. LESSER: May 24th.

THE COURT: May 24th was a Friday before Memorial Day weekend and they issued their decision on the 28th, which is the next business day.

MR. WALLACE: They never saw it, Judge. It got to the clerk and he -- counsel is here. I will just tell you that what has been relayed to me is that the clerk called up and said they are not going to look at it. They are not going to look at evidence or a long letter.

THE COURT: Normally, you would have to get permission to submit something in addition to the --

MR. WALLACE: So we drafted a short letter saying we want permission to renew this and, of course, that was denied, too, because on what basis? The case is over.

THE COURT: I think it's pretty clear from reading the decision that whoever drafted it never saw that letter.

MR. WALLACE: Absolutely.

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Maybe we should have the plaintiff replead.
Sorry, D.A.B. replead.

MR. WALLACE: Defendant on the counterclaim.

THE COURT: Yes.

MR. SCHARF: They don't need to, Judge.

THE COURT: Before we jump to conclusions --

MR. WALLACE: In fact --

THE COURT: We have new facts not known, for
whatever reason -- and I don't want to get into that
now -- not known to the defendant when they drafted the
counterclaim. We are now dealing with a different set
of facts and a motion addressed to a counterclaim
drafted before the discovery. It makes no sense.

MR. SCHARF: Your Honor, if he were to make an
oral application --

THE COURT: If the defendant were to replead --
I'm trying to think what do we have here. Is it a
contract? Is it some kind of a fraud? Is it -- I
don't know what it is. I shouldn't have to draft that
claim. They should draft it.

MR. WALLACE: And you're right, your Honor. We
were in no position, as you know, when we got served
with the complaint and prepared an answer and
counterclaim, the first thing you do is ask the client:
I read these documents. Is there a writing extending

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2 this agreement? He says they told me, they kept
3 telling me back to August of 2010 don't worry. Your
4 loan is extended. We only found out a month ago, six
5 weeks ago that it had been extended in writing.

6 THE COURT: I think the only logical thing to do
7 here is to grant reargument to the extent of denying
8 the motion under 3211 without prejudice and
9 permitting -- granting leave to the counterclaim
10 defendant to replead the counterclaim. Then we can
11 deal with a 3211 motion knowing precisely what they
12 pled. You are asking me to dismiss a claim that hasn't
13 been pled yet.

14 MR. SCHARF: No, your Honor. I am asking you --
15 let's deal with it from any theory. Let's just deal
16 with breach of contract. Please, just give me a couple
17 of minutes, Judge, because I know it's troubling you
18 and I am trying to address it.

19 THE COURT: Sure. You are putting me in a
20 position of being an advocate for the plaintiff and I
21 shouldn't. I don't know what their claim is now.

22 MR. SCHARF: They have stated what their claim
23 is. Mr. Wallace put it in his affidavit.

24 THE COURT: Good, then let him replead.

25 MR. SCHARF: Judge, no --

26 THE COURT: Yes.

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THE COURT: Your motion under 3211 -- sorry.
Your motion to renew is granted. To the extent that
you are granted leave to replead, the underlying motion
that dismissed the counterclaim is hereby vacated.
Judge Fried's decision is withdrawn by me because now I
am the judge.

You have leave to move again under 3211 once the
defendant, D.A.B., has finally answered, and you are
going to answer now, as well. Is it an answer or are
you a third-party claimant?

MR. HOLLANDER: I am a defendant as a lienor.

But may I, just for the record, your Honor,
clarify respectfully that when you were pointing and
giving instructions, you were first referring to
D.A.B.'s counsel and secondarily pointing to Orchard's
counsel because it's not clear on the record that you
were granting D.A.B..

(PLEASE CONTINUE ON FOLLOWING PAGE)

THE COURT: Oh, you're right. I thought we were